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STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company	)	
	)	Docket No. 00-0259
Petition for Expedited Approval of Implementation of a Market-based Alternative Tariff, to Become Effective on or before May 1, 2000, Pursuant to Article IX and Section 16-112 of the Public Utilities Act	)	
	)	(cons.)
Central Illinois Public Service Company Union Electric Company	)	
	)	Docket No. 00-0395
Petition for Approval of Revisions to Market Value Tariff, Rider MV	)	
Illinois Power Company	)	
	)	Docket No. 00-0461
Proposed New Rider MVI & Revisions to Rider TC	)	

ILLINOIS POWER COMPANY'S REPLY BRIEF

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Pursuant to the Hearing Examiner's Ruling on October 17, 2000 and § 200.800 of the Commission's Rules of Practice, Illinois Power Company ("Illinois Power," "IPC" or "IP") hereby submits it Reply Brief in the above-referenced, consolidated dockets.

INTRODUCTION & SUMMARY

In these consolidated cases, Commonwealth Edison Company ("ComEd," "CE" or "Commonwealth"), Central Illinois Public Service Company and Union Electric Company (collectively, "Ameren") and Illinois Power each submitted proposals to replace the market values reported by the Neutral Fact-Finder ("NFF") process with market values based on indices.

It is now clear that most parties in this case agree with (or have at a minimum remained neutral on) many fundamental aspects of IPC's proposal. While various parties would prefer different approaches with respect to certain issues, this general concurrence with our proposal should not get lost in the flood of paper.

The NFF process is flawed, as all but one party to this case realizes. Illinois Power's proposal represents a just and reasonable alternative to that process. This Commission should not impose inappropriate modifications to our proposal. If the Commission were to impose such modifications, it runs the risk that a flawed process remains in effect—an outcome that would not serve the advancement of competition nor fulfill the mandate of the General Assembly.

The determination of market values under the Public Utilities Act ("PUA") is key to at least two other fundamental parts of the law. First, market values are used to determine the Transition Charge ("TC" or "CTC") paid by customers who take delivery service. In general, higher market values lead to lower TCs. Second, the market value becomes the price for power and energy for those non-residential customers who are eligible for, and take service under, the power purchase option ("PPO").

If the market values used to establish TCs are low in comparison to the actual market prices, customers will be faced with higher-than-expected TCs and will also face higher than expected energy prices from alternative suppliers (because those suppliers will likely be providing energy at the actual market price). The result is a price that is above the artificially low tariff price that the customer can obtain by staying with the incumbent utility (either on bundled tariffs or on the PPO, if eligible). Faced with this economic reality, customers do not switch and competition is hindered. On the flip side, if the market values used to determine TCs are high in comparison to the actual market prices, utilities will be unable to re-sell the freed up power and energy at those prices and thereby will not be able to collect revenues that the General Assembly intended for them to collect as part of a carefully balanced approach to deregulation. Furthermore, because the target price (used for PPO) is too high, RESs do not have to compete as vigorously as they would against an accurate market value. This harms consumers—the real recipients of the benefits of competition.[1]

It is critically important for the market value to be set properly—neither too high nor too low. The NFF process does not result in proper market prices. IPC's proposed market value index ("MVI") will set market prices properly. Despite some parties' calls to bias the result for no other analytical reason than they think such a bias favors one set of competitors or another, the Commission should fulfill the role set for it by the General Assembly and approve IPC's MVI proposal because it is a just and reasonable alternative in light of the evidence in this case.

To recap, IPC's basic proposal replaces the NFF values with market-based values derived as follows:

(1) *On-peak* values for firm energy are based on into-Cinergy forward contract data derived from two electronic exchanges and one published source, with a Basis Adjustment applied to the values to address any differences between into-Cinergy prices and Lower MAIN prices.[2] The data is collected for the last five business days of the preceding month and the first five business days of the current month.

(2) *Off-peak* values are derived from historical data for the day-ahead market.

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[1] "The Commission agrees with the assertions of many utility witnesses that enhancing consumer welfare must be the benchmark of any deregulatory scheme and that consumer welfare is enhanced when prices are low and products are varied and plentiful." ICC Dkt. Nos. 98-0013 & 98-0035 (cons.), Order at 25 (June 12, 1998).

[2] Non-firm prices are derived by dividing the firm values for any given month by 1.15.

(3) *TCs* are calculated in the same manner that they are calculated using the NFF values, including the PJM load-shaping adjustment known as the Zuraski adjustment. IPC's intent was not to alter the methods already used to adjust the NFF values, but rather was merely to replace the NFF values with the new MVI values.

(4) The resulting *Market Values* and *TCs* will be published by the 8th Business Day of each month to be effective for customers who begin delivery service in the following billing month and for customers whose anniversary dates are in the following billing month. These values will be submitted to the Commission and will be available on IPC's website.[3] Furthermore, these values will be in effect for those customers to whom they apply for an entire 12-month period.[4] Thus, although new values will be re-calculated the next month, those new values will only apply to the customers with anniversary dates in the following billing month and will not alter the values applicable to customers who had anniversary dates the preceding month.

IPC's methodology combines a liquid trading hub, a market basket of data sources, data collection close to the time the resulting values become effective and sufficient time for customers to make decisions. This combination balances the needs of all parties. While we remain open to appropriate modifications, we are not willing to change the core of our proposal. Therefore, at this time, we are not willing to:

(1) Use an into-CE hub and data sources;

(2) Change our load shaping adjustment methodology or adjust our off-peak values due to the type of data used in pricing that energy;

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[3] For customers who have individually-calculated TCs, a password will be required to obtain the information.

[4] TC values might change due to other factors changing, but the market values used to set the TC would not change for that customer until the customer's next anniversary date.

(3) Adjust our values for what have been termed "optionality," "planning reserve," "energy imbalance" or "capacity backed" adjustments;

(4) Change the time periods during which data are collected and market values & TCs are effective, including the monthly re-collection of data and the recalculation and publication of values for the subsequent 12-month period; or

(5) Agree to an interim tariff only—while we are fully committed to discussing refinements to our approach after it is approved, the lack of definiteness provided by an interim tariff will only sow confusion for customers, RESs and IPC and needlessly lead all to expend further resources in the future.

None of the above adjustments and modifications are warranted given the evidence in the record in this case. Indeed, the consensus on the first point is now clear: IPC should use into-Cinergy, not into-ComEd. The remaining issues represent places where parties seek results-oriented adjustments without properly demonstrating that the adjustments are supported by the evidence.

Finally, the law is clear that IPC cannot be required to offer PPO service to a customer who has a 0 TC. Any other conclusion is contrary to the law and to sound public policy.

It would be regrettable indeed if IPC's better approach were not implemented solely because the Commission heeded those who seek to bias the results using adjustments that were not presented with sufficient clarity or evidence.

ARGUMENT

The following uses the outline attached to the Hearing Examiner's Ruling of October 17, 2000 with the modification that the headings have been re-cast as sentences.[5]

I. The Applicable Statutory Provisions Support IPC's Positions & Undermine Several Other Parties' Positions.

No party disagrees with the applicable statutory provisions nor does any party disagree with the applicable canons of construction. Rather, several parties appear to misread the statute or ignore those parts with which they disagree. Regardless of whether these parties or this Commission agrees with what the General Assembly passed (and the governor signed), we should all endeavor to fulfill the legislature's intent rather than try to thwart it. The goal is simple:

> In construing a statute, courts are required to ascertain and give effect to the intent of the legislature. Faced with a question of statutory construction, courts should first look to the language of the statute to determine the intent of the drafters. When the statutory language is clear, no resort is necessary to other aids of construction.

Zekman v. Direct American Marketers, Inc., 182 Ill.2d 359, 368-69, 695 N.E.2d 853, 858 (Ill. 1998) (citations omitted). Furthermore, "a court will avoid an interpretation of a statute that would render any portion of it meaningless or void. Also, a court presumes that the legislature, in enacting a statute, did not intend absurdity, inconvenience, or injustice." *McNamee v. Federated Equipment & Supply Co.*, 181 Ill.2d 415, 423-24, 692 N.E.2d 1157, 1161 (Ill. 1998).

Reaching that goal should be a straightforward exercise given the language of the statute. The Electric Service Customer Choice and Rate Relief Law of 1997 ("Customer Choice Law") calls for an orderly transition during which customers of electric utilities become eligible to buy

[5] A failure to specifically reply to any particular point made another party should not be viewed as concurrence by IPC to that point.

power and energy from alternative retail electric suppliers ("ARES"). *See* Public Act 90-561. As a part of opening the Illinois electric markets to competition, electric utilities are permitted to collect a transition charge. *See* §§ 16-102 & 16-108.[6] In theory, the TC represents the revenue an electric utility loses when a customer switches from traditional bundled service to competitive service. In actuality, with the inclusion of a mitigation factor in the calculation, the TC represents only a portion of the revenue an electric utility loses when a customer switches to competitive service.

This last point is crucial because it directly undercuts the position of Staff in arguing that the Commission should seek to impose (and utilities should be willing to accept) MVI results that are skewed upward. *See* ICC Staff Br. at 1, 9-10. The General Assembly has already chosen the amount by which an electric utility's revenues should be reduced from full recovery of its lost revenues. It is not for the Commission to disregard this policy decision by arbitrarily raising this amount via backdoor adjustments to the MVI results. Not only would doing so result in a frustration of the General Assembly's wishes, it would directly contravene the Commission's mandate which is (as even Staff recognizes, Br. at 18, n.38) to balance the opposing needs of all parties—utilities, new entrants and consumers. *See* § 16-101A.

The IIEC makes an argument that belies the plain wording of § 16-112(a) and indeed, leads one to wonder if it is reading the same statute as every other party in this case. That subsection provides (emphasis added):

> The market value to be used in the calculation of transition charges as defined in Section 16-102 shall be determined in accordance with either (i) a tariff that has been filed by the electric utility with the Commission pursuant to Article IX of this Act and that provides for a determination of the market value for electric power and energy as a function of an exchange traded or other market traded index, options or futures contract or contracts applicable to the market in which

[6] All references to statutory provisions are to the PUA, 220 ILCS Part 5.

> the utility sells, and the customers in its service area buy, electric power and energy, or (ii) in the event no such tariff has been placed into effect for the electric utility, *or in the event such tariff does not establish market values for each of the years specified in the [NFF] process described in subsections (b) through (h) of this Section,* a tariff incorporating the market values resulting from the neutral fact-finder process set forth in subsections (b) through (h) of this Section.

The IIEC attempts to turn the emphasized language into a reason to reject IPC's proposal because our MVI proposal does not include every possible year for which the NFF could issue market values. IIEC Br. at 30-31. Our proposal is only a 12-month forward look at the market. Nonetheless, our proposal comports with the law as written and the IIEC's misreading of the statute must be rejected. First, the Commission can take administrative notice of the fact that the NFF itself has never issued a report covering more than the next calendar year.[7] Second, the statute does not state that an MVI proposal must include all possible years for which the NFF could issue values. Rather, it permits utilities (as it does the NFF) to address a lesser time frame.[8] Accepting the IIEC's argument leads to the very type of absurdity that should be avoided: The Commission would reject the MVI proposals (that replace a flawed process with better alternatives) because those proposals do not do what the flawed process was incapable of doing—set values beyond the next year.

Other parties seek to read into § 16-112(a) a word that the legislature itself chose not to use. Subsection 16-112(a) speaks of "customers" and not "retail customers" (which the PUA

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[7] This fact alone refutes the IIEC's contention that customers cannot function without multi-year values. IIEC Br. at 31. These same customers have been operating without these values thus far and there is no guarantee that any methodology will produce longer-term values.

[8] What, if anything should be done with regard to continuation of the NFF process or how to handle future years should a subsequent NFF actually publish values for years beyond the next calendar year are questions that are not properly before the Commission in this case and have not been addressed by the parties in their evidentiary filings or their opening briefs. Thus, there is no need for the Commission to be concerned with such hypothetical questions at this point in time.

specifically defines in § 16-102). Despite the carefully chosen word, several parties (and especially NewEnergy, Br. at 8-11) seek to read the modifier "retail" into this section. Of course, had the General Assembly meant to limit that subsection to retail customers, it clearly knew how to do so since it not only included a separate definition for the term, it used that term in numerous other sections of the PUA. *See, e.g.*, §§ 16-103, 16-104 & 16-108. NewEnergy also attempts to subtly, but improperly, alter the statute. The statute speaks of "the market in which the utility sells, *and the customers* in its service area buy;" it does not state "*and its customers* buy" as NewEnergy would have the Commission believe. NewEnergy Br. at 9.[9] The customers at issue do not necessarily have to purchase from the utility—which, of course, is the whole point of choice. Thus, the customers envisioned in § 16-112(a) may or may not be buying from the incumbent and may or may not be retail or wholesale.

In many places, NewEnergy argues for adjustments to the MVI "to reflect the true cost of serving retail electric customers." NewEnergy Br. at 8. However, the NFF is not limited to retail contracts in setting a market value. § 16-112(c)-(e). The MVI proposals replace the NFF. Therefore, since the NFF itself does not use contracts only applicable to retail customers or publish values solely applicable to retail load, the MVI should not be so limited either. This undercuts all of the adjustments argued for by NewEnergy that focus solely on NewEnergy's cost of serving retail customers. That is not the point of creating an MVI.

Finally, the rationale for taking a broader view of the term (*i.e.*, customers can be either retail or wholesale) is compelling: when a utility has power to sell because a retail customer has decided to obtain power from an ARES, the most likely buyer will not be another retail customer,

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[9] IPC agrees with NewEnergy that the goal should be to promote competition and not incumbents. NewEnergy Br. at 12. But equally, the goal is not to promote or protect competitors from the risks of entering a market. *See* n.1 above.

but rather a wholesale buyer, especially one who has load to serve because it is now serving retail customers in the utility's service area.

Before turning to the specific modifications sought by various parties, it is important to recognize that the default in this case (if IPC cannot accept modifications ordered by the Commission) is not a modified tariff; rather, it is the NFF, with its attendant flaws. The General Assembly specifically permitted the Commission to make modifications to a utility's MVI proposal, but if the utility could not accept the modifications, they could not be imposed unilaterally; rather, the NFF process would continue. § 16-112(m). The Commission should not be misled by the Staff's argument (Staff Br. at 9-10) that the Commission should impose as many value-raising adjustments as it believes IPC will accept. Not only is such a results-oriented argument devoid of any statutory mooring, it creates the possibility of the NFF values being used for some time to come while the Commission and parties expend needless resources re-litigating the same issues over and over again (but with slightly different outcomes) until finally IPC accepts the modified tariff.[10]

Instead of such a wasteful process, the Commission should carefully consider which, if any, modifications are proper and will be accepted by each utility. No party should favor "indefinite delay" (ICC Staff Ex. 6.0 at 2) over selecting a better path than the current NFF process.[11] For similar reasons, the Commission should reject the notion (advanced, for example, by NewEnergy, Br. at 18) of leaving these cases open indefinitely while parties continue *ad nauseam* to see what else they might want to propose.

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[10] There is nothing in the statutory scheme that envisions turning the Commission and the current parties into actors in *Groundhog Day*.

[11] All references to Exhibits are in the form "[Party] Ex. [No]. at [p.]" unless otherwise noted. Also, references to the transcripts are in the form "Tr. [p.] ([date])" unless otherwise noted.

II. Illinois Power's Methodology for Determining Prices under its Market Index Proposal Should Be Approved by the Commission.

A. No Party Has Raised Any On-Peak Issues That Warrant Modifying Illinois Power's Proposal.

As noted at the outset, the Commission should not lose sight of the fact that, in general, parties support IPC's framework.

1. *Support is Overwhelming for IPC's Use of Into-Cinergy (Into-ComEd v. Into-Cinergy).*

Even some of IPC's most vocal critics begrudgingly admit that, if our MVI is approved, into-Cinergy is the proper hub. *See, e.g.,* IIEC Br. at 5; NewEnergy Br. at 13-14.[12] The IIEC nonetheless argues that our index should be rejected because it uses into-Cinergy which by definition is for an area outside our service territory. IIEC Br. at 11. As a matter of law, the statute merely requires that the index be "a function of" an index applicable to the relevant market. It does not require that the trades actually occur in the incumbent's service area. The evidence in this case amply demonstrates that into-Cinergy prices are highly correlated to Lower MAIN prices (with Lower MAIN being the region in which IPC is located). *See* IPC Br. at 10 (and cites therein). The evidence is that "[m]arket participants in Illinois commonly trade in the Cinergy market." IP Ex. 2.1 at 9.[13] Our proposal comports with the statute. Furthermore, the record evidence demonstrates that there is no into-IP index currently available. IPC Br. at 10

[12] Unicom's continued mantra (Br. at 2, emphasis added) that "[t]he Into ComEd market is *the most liquid Illinois market*" borders on the ridiculous and is akin to arguing that rubbing your hands together is the best way to warm yourself *using only your hands* while ignoring an available heater. While factually accurate, it is nonsensical.

[13] The IIEC attempts to create an admission where in fact none was made nor exists. IIEC Br. at 11. IPC's statements that the into-Cinergy hub "is reasonably close to the IP service area" (IP Ex. 2.1 at 9) is a statement of geographical fact not an admission that use of the Cinergy hub does not comport with the statute.

(and cites therein). Therefore, to follow the IIEC's logic to its conclusion leads to the Commission rejecting our proposal with no current hope that an acceptable one could ever be developed.

The IIEC continues with various attacks on CE's approach. The most remarkable item to note with respect to these points is that they take the following form: Here are some problems with CE's approach and an into-ComEd hub, so reject both CE's and IP's proposals. *See, e.g.*, IIEC Br. at 13-18; 22-25. Whatever the merits of CE's proposal, IPC's differs from it, should be analyzed on its own merits and should be approved.

2. *Concerns Regarding the Manipulation, Thinness & Transparency of Electronic Trading Platforms Are Misplaced.*

As is apparent from the Briefs filed by the parties, the concerns on these issues focus on the use of the into-ComEd hub and not IPC's use of into-Cinergy. Therefore, we address only a few lingering items and otherwise rely on our Opening Brief. Some parties propose that a third party or the ICC Staff handle the data collection. IIEC Br. at 5; AG Br. at 12-13. In theory, IPC has no objection with this concept. The problem is that no one has not spelled out the details of such a proposal with enough specificity to put it in to practice at this time. For example, who pays for the expense,[14] how can parties be assured that the data collected is provided to each utility in a timely enough fashion for them to meet their obligations to publish properly adjusted market values and TCs, *etc.* Illinois Power is open to discussing these items and if appropriate solutions can be found, incorporating those solutions into its tariffs. But, for now, our proposal should not be subject to "indefinite delay" while parties identify the relevant issues and work on their solution.

[14] The Attorney General appears to believe (AG Br. at 12) mistakenly that the current NFF process is funded by the utilities when, in fact, it is funded by the State via appropriations to the Commission from the Public Utility Fund of the state treasury (§ 16-112(b)), which receives funds from numerous sources and not just the electric utilities of this State. *See, e.g.*, §§ 2-201, 13-515(g), 13-902(g)(4).

Additionally, the IIEC suggests that IPC's MVI should be rejected because it only considers a portion of the market rather than collecting data on the entire market. IIEC Br. at 7-8, 26-30. Indeed, the IIEC goes so far as to suggest that we must consider *all relevant transactions*. *Id.* at 26. There is, however, nothing in the statute that requires that an MVI look at every transaction. The statute itself calls for the index to be a function of the market not an encyclopedic record of it. § 16-112(a).[15] Furthermore, our proposal is objective in collecting data from certain sources and using that data based on a pre-set hierarchy. In comparison, the NFF process collects some data but then discards the majority of it in a black box process. Our proposal is better than NFF process in this regard.

Finally, it is notable that while some parties mention our inclusion of the published survey data from Power Markets Week, no one recognizes the additional benefits provided from our use of a larger market basket of sources or from the use of a publicly-available data source. For example, our approach undercuts the IIEC's criticism of "elitist" data sources (IIEC Br. at 24) because a published survey is about as egalitarian as one can get. Because this point seems to have eluded so many parties, we reiterate the point here:

> Taken together, the basket of index sources creates a reliable supply of information that provides an adequate basis to establish a market value index. We believe that it is more likely to capture a greater percentage of the over-the-counter volume and reduce the ability of a single participant to bias the index. It also provides market participants with a variety of sources to obtain information, so regardless of their specific circumstances, they will have useful resources by which to track changes in the most volatile piece of the market value. Furthermore, Illinois Power has crafted Rider MVI to include only references to Appendix 1 so that as new reliable sources of information become available, we will be able to add them by altering the Appendix (upon proper approval from the Commission) and not have to change the underlying tariff language when we do so.

[15] The IIEC attempts to distort the record when it says that "there is only an average of 10 trades per day in 12 different contract months ..." IIEC Br. at 12. The data cited are for a sample period only and do not necessarily reflect the additional activity likely for the into-Cinergy hub once IPC's proposal is implemented.

> In combination with our monthly updates of the market values, IP's proposal surveys 120 business days worth data from three sources each to arrive at market values.

IP Ex. 2.1 at 12.[16]

Given the above, the concerns regarding manipulation, thinness and transparency are not substantial enough to reject IPC's proposal.

3. *Illinois Power's Basis Adjustment Should Be Approved.*

In general, our methodology for calculating a basis adjustment is supported by various parties. *See, e.g.*, Staff Br. at 23; NewEnergy Br. at 18.[17] Nonetheless, the IIEC criticizes our basis adjustment purely because we did not place into the record reams of data regarding our proposed methodology. IIEC Br. at 25-26. This criticism elevates form over substance and ignores the simple fact (amply demonstrated by this Commission's own witnesses) that our approach is *the best one* if any basis adjustment is to be chosen.[18]

Because no party seriously challenges IPC's basis methodology and because a rigorous analysis has found it the best, IPC's Basis Adjustment should be approved as proposed.

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16 We continue to offer to include other data sources in our market basket of sources. However, no party has suggested any additional sources.

17 Unicom's argument (Br. at 3) that the Ameren and IPC adjustments should yield similar results will of course be resolved if the same methodology (using the same data and covering the same period) is adopted as recommended by Staff. Absent that, there is no theoretical reason (and Unicom offers no empirical one) for the two to yield the exact same results.

18 The IIEC's criticism that we do not update the basis adjustment more frequently (IIEC Br. at 26) is an instance where we chose one of several possible methodologies based, in part, in an attempt to balance the needs of all parties. We attempted to avoid more frequent updates of items that are likely to be stable over long periods. If there is a consensus with more frequent updates (and thus far there is not), we would be willing to re-calculate the basis adjustment every month along with our market values.

4. *IPC's Proposed Data Hierarchy Focuses on Actual Trades and Should Be Approved.*

The IIEC appears to favor using transactions rather than using more bid-offer midpoints. IIEC Br. at 18-21. Others seem to prefer using more bid-offers. For example, although Staff properly recognizes that IPC's proposal uses "enhanced filtering" of bid-offer data (Staff Br. at 55), the AG appears to argue that we should use CE's data hierarchy (which includes more bid offers). *See* AG Br. at 14.[19] As we have stated before, we are open to modifying our proposal on this point if a consensus emerges. In the absence of such a consensus, we believe our proposed approach strikes an appropriate balance and should be adopted.

B. Off-Peak Prices are Less Volatile and the Use of Historical Data in that Context Should Be Approved.

No party really disagrees with the use of historic data to determine Off-peak values. The only debate is over whether the historic data should be adjusted to reflect different parties' perceptions of what the historic data represent. We address those issues in Section III.F, below, in accordance with the outline circulated by the Hearing Examiner.

Because more appropriate data do not exist and because Off-peak prices are relatively stable, IPC's use of historic data to set Off-peak prices should be adopted.

C. The Only "Other" Two Alternatives Presented in This Case Should Be Rejected.

No party (other than the IIEC) supports rejecting the current proposals in favor of either of the IIEC's alternatives: the flawed NFF process or the mystery prize behind door No. 2.[20]

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[19] It is hard to square this with the AG's own agreement with IPC's position that "actual trades are a better representation of the market value of electric power and energy than are bid/offer midpoints." AG Br. at 14.

[20] The IIEC has proposed working with the parties to create and develop a combination index. *See* IPC Br. at 16-17. The lack of any specificity to this proposal means that it cannot be implemented at this

(continued)

Because of this, we do not belabor the reasons for rejecting these alternatives and rely on our Opening Brief.

Because the NFF process is flawed (and cannot be fixed by this Commission) and because the IIEC's alternative has not been sufficiently developed to even be debated in this case, the only viable alternative presented to the Commission in IPC's case is Illinois Power's MVI proposal. To help advance competition, IPC's proposal should be adopted.

III. None of the Pricing and Market Definition Related Issues Raised by Various Parties Warrant a Change in IPC's Proposed Methodology.

Several parties have suggested a number of modifications to IPC's MVI proposal. The evidence presented in this case, however, does not support any of these modifications.

A. <u>NewEnergy's Optionality Adjustment (Load Uncertainty) is Unwarranted Based on the Evidence, As Even NewEnergy Appears to Concede.</u>

NewEnergy continues to argue for an "optionality" adjustment. The most remarkable aspect of these continuing arguments is their persistence despite NewEnergy's admission that its "assumptions may not be consistent with electricity pricing behavior." NewEnergy Br. at 28. Acknowledging these flaws, NewEnergy now, at the 11^{th} hour, proposes two new "options" neither of which has any record support (indeed, NewEnergy's Brief has no record citations in

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time. Although IPC is willing to discuss this proposal with the IIEC and other parties, such a nebulous concept should *not* be allowed to defeat IPC's well-developed MVI.

Furthermore, the IIEC attempts to create an issue where none exists. As explained in our Opening Brief (at 2) and above (at pp. 2-3), inaccurate market values are a deterrent to competition. The IIEC attempts to distract everyone from this fact with a remarkable leap of logic by attempting to link the lack of competition in IPC's territory to its imbalance tariff. IIEC Br. at 3. The IIEC builds this argument from a general awareness by one witness (Mr. Breezeel) of concerns voiced by some Commissioners. But, the crucial link was not made. The witness' acknowledgement that retail energy imbalance might be a factor for consideration for customers interested in taking delivery services is a far cry from the IIEC's characterization that "the lack of customers taking delivery service is more readily due to its retail energy imbalance service tariff." IIEC Br. at 3. In fact, just two pages later in the transcript cited by the IIEC for this proposition, the witness stated that he had no opinion as to whether our retail imbalance service was important when a customer was deciding on whether to opt for choice. Tr. 601 (10/03/00).

these passages at all, NewEnergy Br. at 29). These sort of 11^{th} hour proposals that have not been tested by the evidentiary process do nothing to promote sound or orderly decision making. IPC has not been afforded an opportunity to present evidence on these last minute proposals. We therefore object to them.

For all of the reasons in IPC's Opening Brief (at 17-19) on this point and for the above reasons, NewEnergy's proposals (and its last-minute options) should be rejected. As Staff notes in its Brief (at 32) "Staff cannot point to a proposal in the record that is ready for implementation at this time."

B. An Energy Imbalance Adjustment Is Not Warranted.

The parties' arguments (*see, e.g.,* NewEnergy Br. at 30-31) on this point add nothing new to the debate. Therefore, IPC stands on its Opening Brief on this point. IPC Br. at 19-20. In sum, as Staff has noted: "the Commission has already ruled on that issue, which is not directly tied to the use of a market index-based or an NFF-based CTC tariff," Staff Br. at 34, and the record evidence does not support an adjustment to account further for imbalance issues.

C. The Record Does Not Support a Planning Reserve Adjustment: Indeed, Making Such an Adjustment Would Be Double Counting the Value of Reserves.

We have a grave concern with various parties' calls to inappropriately adjust the MVI upward by 15% and thus double count the value of reserves. Staff apparently has failed to see the linkage between the arguments made on this issue and the fact that there is "no evidence" that "questioned the use of [IPC's] procedure" for adjusting firm market values to non-firm values. Staff Br. at 45. As we explained in our Opening Brief (at 21), the firm to non-firm (15%) adjustment (firm is reduced by 15% to obtain non-firm values) is made in recognition that the Firm values already adequately account for the 15% planning reserve adjustment now argued for by Staff and others. Because the value of planning reserves are already reflected in the firm numbers, a second adjustment (to add it in again on top of the firm values) is a clear double count and is inappropriate. Lest anyone remain confused, the following example should suffice.

Impact of Double Counting Reserves
On-Peak MVI
Hypothetical Values

	$/MWh	Difference From Firm	Implied Reserve
Firm MVI (From index sources)	$40.00	$0.00	15%
Non-firm MVI (Firm/1.15)	$34.78	($5.22)	0%
Firm with Reserve Double Count (Firm x 1.15)	$46.00	$6.00	**32.25%**

The hypothetical assumes a *firm* MVI value of $40/MWh. The *non-firm* value is then derived by removing the implied 15% reserve, *i.e.*, reducing the firm price by $5.22. *See* IP Ex. 2.2 at 4. To do as Staff and others would have IPC do, we must then add in an additional $6.00/MWh to the *firm* price creating an implied reserve of over 32%. Illinois Power doubts that the Staff of this Commission or the Commission itself would find that a double recovery of over 32% for a reserve margin was just and reasonable if, for example, IPC still had a fuel adjustment clause and attempted to recover purchases of reserves at that level through its UFAC. No party has argued for such a steep adjustment and none is warranted.

Furthermore, Staff's argument that there is nothing in the record to suggest that sellers on the electronic exchanges carry reserves (Staff Br. at 36) is factually inaccurate: IPC presented evidence that "[t]he supplier of Firm Energy [as traded on the exchanges] must maintain either an operational or financial reserve to protect against the loss of generation or transmission service." IP Ex. 2.6 at 9.

CILCO's continued reliance on what it chose to contract for is mystifying. CILCO Br. at 4. This case is not about absolving an ARES from its good or bad business decisions. It is about setting a proper market value methodology. In any event, as we showed in our Opening Brief (at 20-21), CILCO's own deals belie its arguments. With respect to its deal with Ameren, CILCO purchased only 100% of its needs, not 115%. Any additional planning reserve adjustment is unnecessary because it is already included in the firm price charged by Ameren, just as it is already embedded in the into-Cinergy prices used by IPC.

A few errors strewn throughout NewEnergy's argument (Br. at 32-35) also warrant correction. The fact that "NewEnergy is obligated contractually to provide power and energy in a manner that would replicate native load service" is irrelevant. NewEnergy Br. at 32. As with CILCO, this case is not about NewEnergy's good or bad business decisions. It is about the proper index to determine market value in general. Under NewEnergy's logic, every utility should have an ever changing tariff that depends on which RES is involved and on what contract or contracts that RES has seen fit to enter. That, of course, is not what the statute provides.

Second, there is no evidence (and NewEnergy cites to none) to support the assertion that a requirement to point to iron on the ground "is stifling competition in downstate Illinois." NewEnergy Br. at 33.[21] Reliability is a precursor to permitting any customer (bundled, PPO or RES-served) to take service at all. The Commission is well aware of the reliability issues in other parts of the State and should not encourage changes that threaten to erode reliability downstate.

[21] No party argues that this adjustment is required of CE. Yet, CE actually requires that the ultimate seller's system be identified, which is the equivalent of pointing to iron on the ground. *See* CE OATT § 1.25 (defining Designated Resource as a designated generating resource); CE Guidelines for Request of Transmission Service Reservations: Use of OASIS (section entitled Requests for Designation of a New Network Resource).

Third, the proponents of this adjustment nowhere refute two simple points made by Illinois Power. First, there is no evidence that the price for Firm Energy (as traded on, or reported in, the data sources used by IPC) is lower than the price for Native Load or System Firm power. *See* IPC Br. at 22. Indeed, the evidence is that the financial value of Firm Energy is higher than the value for the latter two forms. *See* IP Ex. 2.6 at 9. Second, although the physical characteristics of various forms may differ, this case is about *value* not physical characteristics. *See* IPC Br. at 22.

Finally, the proposals made by NewEnergy (Br. at 34) suffer from the same lack of specificity as many other proposals in this case: nowhere does NewEnergy provide the details needed to implement its proposals in a fair & impartial manner.

The planning reserve adjustment must be rejected.

D. <u>A Capacity Backed Adjustment Is Unwarranted.</u>

In general, CILCO's arguments (Br. at 4-5) on this point add nothing new and therefore IPC rests on its Opening Brief (at 21-22) on this issue. In any event, as Staff has recognized, the proposals made to date are "completely beyond the purview of the Commission" even if one could get over the evidentiary void of showing any adjustment were warranted in the first place. Staff Br. at 39.

E. <u>No Party Has Objected to IPC's Non-Firm Adjustment.</u>

No party has objected to IPC's adjustment of firm prices to reach non-firm prices (by dividing firm prices by 1.15). This adjustment should be approved.

F. The Evidence Does Not Support an Adjustment to Historical Off-Peak Prices ("Dump Energy" Issue).

IPC presented the reasons for rejecting NewEnergy's suggested adjustment to Off-peak in its Opening Brief (at 22-24). NewEnergy's Brief (at 20-24) on this point adds nothing new and therefore, IPC stands on its Opening Brief on this issue.

G. Additional Load Shaping for Off-Peak Prices Is Not Appropriate in Illinois Power's Case.

Similarly, little more needs to be said on this issue. Although the Staff encourages IPC to follow a different path, in the end, Staff recommends that the Commission authorize IPC to implement any of three options. Staff Br. at 51. One of those (retaining what IPC already does) is acceptable to IPC. Given this, we see no reason to address the others or the other parties' variations on a theme.

IV. The Time Period and Notice Related Issues Raised By Various Parties Do Not Warrant Rejecting IPC's Proposal to Use More Frequent Updates Based on More Recent Data.

A. IPC's Monthly Updates are the Proper Solution for It (Periods A/B v. 12 Month Rolling Average).

We are encouraged by Staff's recognition that "Staff cannot argue with IP's claim that the tighter timing, the more 'accurate' the representation of market value." Staff Br. at 58. Staff also recognizes that given the way our proposal functions, "RESs and customers should be able to prepare themselves to make quick decisions ..." *Id.* Unfortunately, some other parties do not recognize these facts.

The IIEC recognizes the problem but refuses to recognize the solution. "The price of a monthly product for the same delivery month can change over time as more information is known in the market ..." IIEC Br. at 28. Indeed, data merely a few months old may not prove reliable in the near term. *Id.* IPC solves this problem by surveying the market on a monthly basis and using values that are valid in the near term—values that any party can hedge against *at that time.* This is in stark contrast to the Period A/B method under which a party may be unable to hedge against the pre-set price because it is several months old and the markets have moved in the interim.[22]

Instead of agreeing with IPC's better path,[23] the IIEC proposes for the first time in its Opening Brief, a new "solution:" off-cycle switching for free. IIEC Br. at 31-32. These sort of 11th hour proposals that have not been tested by the evidentiary process do nothing to promote sound or orderly decision making. IPC has not been afforded an opportunity to present evidence of the revenue and logistical impacts created by this last minute suggestion. We therefore object to it. In any event, there is no need for such a proposal because the short period of time to make a PPO decision is more than adequate. It should be remembered that customers interested in PPO know of this interest well in advance and need only await notice of whether they have a positive TC. Once that is known, it takes minutes (and not the days provided by IPC) to act on that information by calling IPC and requesting PPO service.

The AG's disagreement with our approach on this issue appears to stem from a misconception of how much data the period A/B method and IPC's 12-month method uses. AG Br. at

22 The proposal to hold the values constant from month to month unless they move more than certain amount (IIEC Br. at 31) suffers from the same problem that many parties' proposals suffer from: a lack of definiteness needed to implement a hazy proposal. They present no evidence (or even make any concrete proposal) as to the proper threshold before values are re-calculated or what happens if certain classes would have their values change outside the band but others would not and so forth.

23 We reiterate that while we firmly believe our process is the best approach proposed by any party in this case, we do not intend the following discussion to be used as a basis for requiring either ComEd or Ameren to use our methodology. Rather, the following is intended to demonstrate why the IPC method should be approved as to it.

15-16. The Period A/B method does use a 20-day window but is does so only 2 times per year. Over the course of any year, "IP's proposal surveys 120 business days worth of data from three sources each to arrive at market values." IP Ex. 2.1 at 12. The most data that would be used under the period A/B method would be 40 days of data from 2 sources. Thus, based on the AG's own criteria, IPC's method should be the preferred method.

Furthermore, contrary to the AG's assertions (Br. at 16-17), IPC's method is fairer to all parties and more pro-competitive. Unlike the period A/B method, because we propose more frequent updates closer to the effective date, there is significantly less likelihood that RESs will be locked out of competing against a PPO price that may have been set months in the past and that may bear no relationship to the current market conditions. IP Ex. 2.6 at 10-11. Even if one were to assume that IPC's method imposed some unfairness or anti-competitive burden on others (and we do not agree that it does), the far worse harm would be to lock RESs and customers out altogether for months to come.[24] No party has proposed a perfect (or even a better) solution to this supposed problem. Surely, the proper policy choice (of adopting IPC's method) is found in the old adage: do not let the perfect become the enemy of the good.[25]

24 The AG's concern for RESs' business practices, AG Br. at 16, should be tempered by the fact that few RESs in this case have argued for uniformity and the fact that the ultimate lack of uniformity could exist if some utilities choose to return to the NFF rather than accept inappropriate modifications.

25 CILCO's dislike for our mortgage analogy actually highlights why it is so apt. CILCO Br. at 5-6. There is no dispute that a mortgage represents one of the most significant transactions a residential customer will undertake. And, as CILCO points out, there can be a locked in rate while the necessary approvals and paperwork get finalized, just as there is in the MVI context: once published, IPC's values do not fluctuate until the next month and IPC (by tariff) has a very short window in which to finalize the necessary paperwork and move a customer to choice. Furthermore, because of the Direct Access Service Request cancellation process (again set by tariff), the customer has the analogy of a contingency clause to back out if they do not like the final deal.

For the foregoing reasons and those provided in our Opening Brief, IPC's 12-month method should be adopted.

V. On the Only Other Issue of Substance (the Eligibility of Customers for PPO when They are Not Paying a TC), the IIEC's Position Is Contrary to the Law & Public Policy.

A. There Do Not Appear to be Any Transitional Issues.

No party appears to object to IPC's handling of transitional customers.[26]

B. Based on the Law and Sound Policy, Illinois Power Cannot Be Required to Make PPO Service Available to Customers with a Transition Charge of Zero.

Finally, the IIEC makes yet another argument that ignores the plain wording of the statute and leads to absurd results. In essence, the IIEC argues that all non-residential customers are entitled PPO service even if they are not paying a transition charge. IIEC Br. at 33-39. The statute, however, specifically provides that a non-residential customer is eligible for PPO service only if it "is paying transition charges ..." § 16-110(b). The IIEC's attempts to magically misread the statute should be viewed as just that and rejected.

The absurdity of the IIEC position is highlighted by its attempt to distinguish a customer who has a zero TC from a customer of a utility that has waived TCs for the present time. IIEC Br. at 35-36. The problem is that under the IIEC's logic, both customers are paying all they have been asked to pay. To avoid this, the IIEC now layers on a requirement (which is not in the

[26] Technically, the IIEC's restatement of our proposal (IIEC Br. at 33) is not accurate for those customers with anniversary dates earlier in the year. Our intent is to use the NFF values through either the customer's anniversary date in 2001 or January 1, 2002 (at which point all values would change to the MVI for January 2002 for those customers who were not already on MVI values and change again, if needed, on the customer's anniversary). This is no different than what would happen if new NFF values were used for 2002, but there is no guarantee that there will be any NFF values published for IPC's territory. The issue of what happens if a customer on PPO has its transition charge fall to 0 due to the change in January 2002 is addressed in the next section, but we note this "problem" already exists even when the NFF process is used.

statute) that the utility must first "request" payment. In addition to the fact that this is not in the statute, even if it were, it would not help the IIEC. Implicit in the IIEC's logic is that neither customer has been "requested" to pay anything or both customers have in fact been asked to pay ... nothing.[27]

Furthermore, the differences that exist between two customers, one with a razor thin positive TC and one with a razor thin negative TC support the General Assembly's decision, not the IIEC's misreading of the statute. IIEC Br. at 37-38. As the ICC Staff recognizes, those with a 0 or negative TC were already receiving (in the fully regulated regime) a "bargain" relative to the market. The same cannot be said for those with a positive TC. Thus, distinguishing between the two sets of customers makes perfect sense—treating them the same does not.

The IIEC also misunderstands IPC's proposal when it argues that there could be monthly stepping on and off of PPO eligibility. IIEC Br. at 38. Under IPC's proposal, once a customer has its market value set, it is set until the customer's next anniversary date. Thus, the only way for the customer's TC to change until that date is for another component of the TC calculation to change. But, these changes are less volatile and less frequent and, in any event, will not lead to multiple times in the same year where a given customer becomes eligible and then ineligible for PPO.

The IIEC finishes it argument with yet another *non sequitur* that no other party believes to be factually true: we should be required to offer PPO service to prevent us from biasing the market upward. IIEC Br. at 39. The simple fact is that, as we explained above and in our opening Brief, we have no incentive to bias the value in either direction. Although we have

27 The Commission can also take administrative notice of the fact, that, if CILCO (which is referenced by the IIEC) should ever decide to collect TCs, its tariff would also make a customer with a TC of 0 ineligible for PPO service. CILCO Rate 37 Availability.

noted our disagreement with this approach, several parties believe that upward bias is a good thing (*see, e.g.*, Staff Br. at 9-10) and have actively encouraged the Commission to do so. In any event, the IIEC ignores the fact that any bias upward reduces IPC's TC revenue *from all customers* not just those on PPO.

The IIEC fares no better in its attempt to permit a customer to continue taking PPO service even if its TC drops to zero during the course of the PPO contract. IIEC Br. at 34. Unfortunately for the IIEC's position, the statute keys eligibility to a customer who "is paying," not "has paid" or "will be paying," a transition charge. A utility is not required to ensure that the customer meets the eligibility criteria for the full year; rather, it is required to offer the service for the full year *if the customer meets the eligibility criteria*. The IIEC recognizes the importance of conditions precedent (IIEC Br. at 34) to any business arrangement but fails to then follow this point to its conclusion: if a statute, tariff and the accompanying contract (*cf.* § 16-129) all include trigger points at which one party may no longer rely on them, then an otherwise minimum period no longer applies. An example that the IIEC should find familiar would be a one-year contract for commodity (say grain) that sets a price unless a reference value falls below a pre-set number. If the reference value falls below that value, no party should believe they get to continue using the contract—even if the one-year period has yet to run. All one needs to do is replace price with TC and reference value with 0 to reach the obvious and intended result of § 16-110.

This simple business arrangement also undercuts the IIEC's argument that customers would "not expect" that they might lose their PPO eligibility. IIEC Br. at 36. Customers who read the statute, IPC's tariff and the PPO contract can have no other reasonable expectation. Furthermore, there is no evidence in the record that customers "expect a certain amount of price stability" and the IIEC cites to none. IIEC Br. at 36. Even if it were true, there is a simple solution and one that does not call for negating the will of the legislature: any customer eligible for delivery service can always contract for a long-term fixed price contract from a RES. The customer may pay more for this price certainty but then the customer is no longer bearing any risk for price volatility. Again, this concept should not be new to the IIEC member companies.

Finally, it is important to note that absolutely no other party supports the argument advanced by the IIEC. The ICC Staff, however, advances the idea of a limited notice period before a customer whose TC falls to 0 would lose PPO service. Staff Br. at 61. IPC does not object to this proposal but notes that to a large extent, the concept is already embedded (in a different form) in IPC's tariffs. Currently, if a PPO customer's TC falls to 0, it continues receiving PPO until its next meter read date, at which point it must take some other service. IPC's MVI does not change this. Additionally, because a customer will know its TC by the 8th business of the billing month preceding its anniversary date, those on PPO will already know weeks in advance whether they will lose PPO availability. Since most of IPC's dates are tied to meter read dates, we believe a strict 30 day notice will be awkward but are willing to accept it if imposed, assuming the customer continues to pay its prior positive TC for this short interim period.

The Commission should reject the IIEC's attempt to reform the statute to suit its parochial purposes.

CONCLUSION

In sum, Illinois Power's MVI proposal (as amended by IPC's witnesses during the course of these proceedings) is just & reasonable and should be adopted by this Commission without further changes. From the outset, Illinois Power undertook a process of working with and listening to various parties. The goal was to shape a final tariff that balanced the interests of many different parties and with which IP could be satisfied. We believe we have reached that point.

Our proposal is just & reasonable and a significant improvement over the NFF process. Our proposal is a pro-consumer step in the right direction at a time when the electric market will be opening up to all non-residential customers. Our proposal combines a market-basket of data sources for a liquid trading hub with a process that provides the appropriate price signals through-out the year. The arguments of the parties to the contrary (along with their proposed modifications) should be rejected.

Respectfully submitted,

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